IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 336 OF 1992

Yusuf Hasan Shaikh .Petitioner

Vs.

Smt. Rashida B. Fakir . ... Respondent

Mr. R. S. Apte, Advocate for the Petitioner.

Mr. A. P. Vanarase, AGP for Respondent No.2.

CORAM : D. G. DESHPANDE, J.

DATE : OCTOBER 5, 2006.

P.C.

. One Shankar was the owner of the property. He entered into an agreement with Jakawalla Shaikh, who is the husband of Petitioner No.2 and brother of Petitioner No.1, dated 13th January, 1971. On 21st August 1972 Shankar executed sale deed in favour of Respondent No.1 in respect of the very same property. She is an agriculturist. Then Respondent No.1 executed sale-deed in favour of both Petitioners on 21st April 1988.

2. It is this sale-deed which came to be questioned suo-motu by the Revenue Authorities under the provisions of Section 63 of the Bombay Tenancy and Agricultural Lands Act 1948 (hereinafter referred to as the Tenancy Act).

3. This Section prohibits purchase and sale of

Agricultural lands to non-agriculturists. The Courts below have held that Respondent No.1 after marriage goes to another family and if then and her becoming agriculturists in the husband's family, cannot make the Petitioners agriculturists. Therefore, on that count, the aforesaid sale-deed is declared invalid by the Revenue Authorities.

4. The counsel for the Petitioners contended that permission to purchase can be given to non-agriculturist by the Revenue Authorities. Even such permission can be given after execution of the sale deed, and thereore, considering this fact, necessary directions be given to the Revenue Authorities to consider the application of the Petitioner to legalise the sale deed and grant permission, considering relevant provisions of the said Act.

5. It may be that on the face of it that sale deed executed by Respondent no.1 is without obtaining approval or prior permission. But looking to the fact that they are related to each other and there are no other legal defects in the suit, stamp duty is properly paid. Therefore, law empowers the Revenue Authorities to grant post-facto sanction. The

impugned orders of the Authorities below, are set aside and Revenue Authorities are directed to consider that such power is given to the Collector or an Officer, by Government to grant permission for such sale. Therefore, orders of the Courts below are set aside and matter is remanded back to the Collector Solapur who will consider the prayer of the Petitioners for granting permission to their sale-deed, executed by Respondent No.1 in favour of Petitioner. The Petitioners to approach the Collector Solapur with the certified copy of this order, on 26th October, 2006. The Collector Solapur may personally or through Officer, duly authorised by the State Government in that behalf, under Section 63 of the Tenancy Act, decide the said application and grant permission on such terms and conditions, as may be found necessary and proper in the circumstances.

6. Petition is disposed of in above terms. Rule is made absolute.

[D. G. DESHPANDE, J.]